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March 1, 2016

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

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The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
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#10 OF MARCH 1, 2016

Lori Glasgow
LORI GLASGOW
EXECUTIVE OFFICER

Agenda No. 43
10/20/15

**Re: PROJECT NO. R2012-02436-(3) TO R2012-02440-(3);
R2013-03620-(3) TO R2013-03630-(3); AND ENVIRONMENTAL
ASSESSMENT CASE NO. RENV 2012-00258-(3)
THIRD SUPERVISORIAL DISTRICT/THREE-VOTE MATTER**

Dear Supervisors:

Your Board previously held a duly-noticed public hearing regarding the Mitigated Negative Declaration ("MND") for the above-referenced projects which proposed development of 16 single-family residences on 16 lots in the unincorporated community of Monte Nido in the Malibu Zoned District. The matter was before your Board to consider an appeal by the decision of the Regional Planning Commission ("Commission") to disapprove the MND.

At the conclusion of the hearing, you indicated your intent to approve the decision of the Commission and instructed our office to prepare the appropriate findings to affirm the decision of the Commission to disapprove the MND. Enclosed are findings for your consideration.

Very truly yours,

MARY C. WICKHAM
County Counsel

By

Elaine M. Lemke
ELAINE M. LEMKE
Acting Assistant County Counsel
Property Division

APPROVED AND RELEASED:

Thomas J. Faughnan
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EML:ph
Enclosure

c: Sachi A. Hamai, Chief Executive Officer
Patrick Ogawa, Acting Executive Officer, Board of Supervisors

**FINDINGS OF THE BOARD OF SUPERVISORS
AND ORDER
PROJECT NOS. R2012-02436-(3) to R2012-02440-(3) and
R2013-03620-(3) to R2013-03630-(3); and
ENVIRONMENTAL ASSESSMENT CASE NO. RENV 2012-00258-(3)**

1. The Los Angeles County ("County") Board of Supervisors ("Board") conducted a duly-noticed public hearing on October 20, 2015, regarding Environmental Assessment Case No. RENV 2012-00258-(3) ("Environmental Assessment") which consisted of a Mitigated Negative Declaration ("MND") and Mitigation Monitoring and Reporting Program ("MMRP"). The MND assessed the following: Project Nos. R2012-02436-(3) to R2012-02440-(3) and R2013-03620-(3) to R2013-03630-(3) ("Residential Projects"), which included 16 plot plan applications ("Plot Plans") (collectively the "Project").

Historical Approvals

2. The proposed Residential Projects consist of 16 single-family homes on 16 lots located along the 25700 block of Piuma Road within the unincorporated community of Monte Nido in the Malibu Zoned District ("Project Site") within the Santa Monica Mountains Coastal Zone ("SMM Coastal Zone"). The Residential Projects would be located on lots of Tract No. 38931 ("Tract"), originally approved by the County in 1982, and recorded in 1987 for 22 single-family lots, three open space lots, and associated drainage facilities and improvements. A modified map for the Tract, applied for in 2006, and approved by the County on May 1, 2013, sought to develop only 16 of the original 22 lots, set aside five lots for open space, and eliminated the Tract's original requirements to provide a costly debris basin and drainage improvements.
3. The initial 1980's proposed 22-home tract development required a coastal development permit ("CDP") from the California Coastal Commission ("Coastal Commission") in addition to the County's 1982 approval of the Tract. In 1983, the Coastal Commission approved such a permit (the "1983 CDP"). The 1983 CDP required that "all development proposed for each lot shall be subject to a coastal development permit from the Coastal Commission or its successor agency" and recognized that the Coastal "Commission or its successor agency" could alter the requirements of the 1983 CDP as to future development on the lots. That 1983 CDP also required that development of the Tract "be pursued in a diligent manner and completed in a reasonable period of time."
4. After approval of the Tract and its recordation, individual applications for plot plan approvals in concept were required to be submitted to the County (and ultimately approved by the Coastal Commission) to develop each single-family residence. Since the 1987 recordation of the Tract Map by the original subdivider, only one of the originally proposed 22 single-family homes has been built.

Project Applications for the Current Project Were Initially Regulated by the 1986 Malibu Land Use Plan

5. The Project must be considered under the applicable Coastal Plan developed for the SMM Coastal Zone and regulations because it is located in the SMM Coastal Zone. When the current developer, Vintage Pacific at Monte Nido, LLC ("Developer") filed its first set of five Plot Plans with the County in October 2012, and the remaining 11 Plot Plans for the Residential Projects in December 2013, the 1986 Malibu Land Use Plan was in effect. Accordingly, when initially processing the Project, the County applied that 1986 land use plan and then-in-effect general zoning regulations found in Title 22 of the Los Angeles County Code ("County Code"). Subject to that land use plan and the regulations, any approvals by the County of the Residential Projects would have been "approvals in concept" as prerequisites to CDPs issued by the Coastal Commission.
6. On September 24, 2014, the Department of Regional Planning's ("Regional Planning") Director ("Director") approved in concept 13 of the 16 Plot Plans for the Residential Projects pursuant to Director's Review under Section 22.56.1660 of the County Code. On that same date, the Director also approved the MND and MMRP prepared for the Project under the California Environmental Quality Act (Public Resources Code section 21000, et seq.) ("CEQA"). (Collectively, the MND and MMRP will be referred to as the "MND.")
7. The Director's approvals in concept become final only if not timely appealed to the County Regional Planning Commission ("Planning Commission"); the deadline for such an appeal was October 8, 2014. On that date, as discussed below, an appeal of the Director's approval of the MND was filed by the Monte Nido Valley Community Association ("Community Association") to the Planning Commission, thereby vacating the Director's approval of the MND.

Certification of New Local Coastal Program Impacts the Project

8. Two days later, on October 10, 2014, the Coastal Commission certified a local coastal program for the SMM Coastal Zone ("Santa Monica Mountains LCP" or "LCP"). As explained more fully below, certification of the Santa Monica Mountains LCP impacted the County's ability to continue to process the Project under the 1986 Malibu Land Use Plan and prior regulations. The Santa Monica Mountains LCP includes a land use plan ("LUP") and local implementation program ("LIP") (revised zoning) that is applicable to certain projects in the SMM Coastal Zone, including the Project. Once the LCP was certified, prior zoning, zoning regulations, and the previous 1986 Malibu Land Use Plan were no longer applicable to the Project.
9. Due to the appeal by the Community Association, the Planning Commission conducted a duly-noticed public hearing, discussed more fully below, on April 8, 2015, regarding the Environmental Assessment. After closing its hearing, the Planning Commission upheld the Community Association's appeal of the MND,

overturning the MND approval by the Director. Thereafter, the Developer timely appealed the Planning Commission's decision to the Board.

10. The Project's 30-plus year history that began in the early 1980s, involved, among other things, different developers, a bankruptcy filed by the original subdivider/developer, and a March 2013 settlement agreement related to that bankruptcy proceeding. The settlement agreement, also discussed more fully below, related to, among other issues, processing of the Project.

Zoning and Land Use Information for the Project Site

11. On September 24, 2014, the date on which the Director adopted the MND and approved "in concept" 13 of the 16 Plot Plans, the Project Site was zoned A-1-1 (Light Agricultural—one acre minimum required lot area). After certification by the Coastal Commission of the LCP on October 10, 2014, the Project Site is now zoned as follows: R-C-1 (Rural Coastal—one acre minimum required lot area) on Tract Lot Nos. 1 through 7, north of Piuma Road; R-C-20 (Rural Coastal—20 acre minimum required lot area) on Tract Lot Nos. 8, 9, and 13 through 22, south of Piuma Road; and R-C-40 (Rural Coastal—40 acre minimum required lot area) on Tract Lot Nos. 10 through 12, south of Piuma Road.
12. Surrounding properties are currently zoned as follows:

North: R-C-1;
South: OS-P(Open Space, Parks);
West: IT (Institutional), C-1 (Restricted Business), and R-C-1; and
East: OS-P and R-C-20.
13. The Project Site is vacant but disturbed with building pads that were previously graded pursuant to the 1983 CDP. Completion of the Residential Projects, however, would require additional grading. Surrounding land uses are:

North: Open space;
South: Open space and single-family residential;
West: Open space and single-family residential; and
East: Open space.

Bankruptcy Proceedings and Related Settlement Agreement

14. The Developer, sometime after early December 2010, purchased all of the lots on the Project Site from a financial institution that had acquired the lots from the original subdivider of the Tract after that subdivider filed for bankruptcy. That original subdivider had posted bonds with the County to cover costs of improvements for development of the Tract, including a debris basin and drainage improvements ("Improvement Bonds"). In its bankruptcy proceedings, the original subdivider filed an adversary proceeding against, among others, the County and the Developer related to exoneration of those Improvement Bonds,

which had been provided by a bonding company that itself had subsequently filed for bankruptcy. As part of a settlement agreement between the County and the Developer in the bankruptcy proceedings ("Settlement Agreement" or "Agreement"), the County released those Improvement Bonds and the adversary proceeding was dismissed. The Settlement Agreement was approved by Board motion at the Board's March 12, 2013 meeting, an action which was neither noticed as a public hearing nor listed on the Board agenda as a public hearing.

15. The Settlement Agreement also covered replacement of the released Improvement Bonds and further development of the Residential Projects by the Developer. Among the terms of the Agreement, the Developer agreed to submit plot plans for the Residential Projects "as soon after the date of [the] Agreement as reasonably practicable" and the County agreed to process and review those applications "as expeditiously as reasonably practical." The Settlement Agreement also required the Developer to dedicate five lots from the original Tract to a public agency and record a deed restriction on those lots only if the Residential Projects were approved in concept by the County and if CDPs were then issued by the Coastal Commission. The Agreement did not, and could not under California law, exempt the Residential Projects from the applicable County Zoning Code nor did it, or could it, require the County to approve the Plot Plans.
16. The Settlement Agreement was executed on March 12, 2013, by the County and the Developer.

Processing of the Current Applications for the Residential Projects

17. Applications for the individual Plot Plans for the Residential Projects were submitted by the Developer to Regional Planning in two phases. The first set of five Plot Plans was submitted on October 24, 2012, prior to the Settlement Agreement. The second set of 11 Plot Plans was submitted more than nine months after execution of the Settlement Agreement on December 24, 2013, the day before a County holiday, and more than a year after the first set. Less than nine months after submission of that second set of 11 Plot Plans, the Director approved the MND and 13 of the 16 Plot Plans and denied the remaining three applications. As set forth above, the Plot Plan applications were reviewed by the Director under the then-effective 1986 Malibu Land Use Plan and then-existing zoning. At those times, pursuant to not only the 1986 Malibu Land Use Plan but also the 1983 CDP, which required a separate CDP for each lot that was to be developed, any approval by the County of the Plot Plans were "approvals in concept." If approvals in concept were obtained from the County, then a CDP from the Coastal Commission was also required for each Plot Plan before any further development could proceed.
18. Shortly after the Developer filed the first set of five Plot Plan applications with Regional Planning along with an Environmental Assessment on October 24, 2012, the County Environmental Review Board ("ERB"), which serves as an advisory agency to the Planning Commission and the Board and whose review of

the Plot Plans was required by the 1986 Malibu Land Use Plan, reviewed those applications on November 19, 2012. ERB identified concerns regarding impacts from development of those five Plot Plans to the riparian canopy and the location of seepage pits and septic tanks; ERB made recommendations to address those concerns.

19. Director's Reviews of the Plot Plans are discretionary projects under CEQA. Accordingly, an Initial Study was prepared for the Project in compliance with CEQA, the State CEQA Guidelines and the Environmental Document Reporting Procedures and Guidelines of the County. Based on the Initial Study, Regional Planning staff determined that a Mitigated Negative Declaration was the appropriate environmental document for the Project and also prepared an MMRP.
20. In September 2013, a draft Initial Study and mitigated negative declaration for the Project were circulated to the County Departments of Public Works, Public Health, Sheriff, Parks and Recreation, and Fire, which includes five divisions—Planning, Land Development, Forestry, Health, and Hazardous Materials—for their input on necessary mitigation measures to include in an MMRP. The draft Initial Study was prepared based on the first five Plot Plan applications based on an understanding that the remaining 11 Plot Plans would be proposed with residences of similar design, bulk, and height of the first five Plot Plans.
21. After the County's receipt of the subsequent applications for the 11 Plot Plans in December 2013, the draft Initial Study was sent in January 2014 to the State as well as trustee, responsible, and neighboring public agencies for their consultation and input. The California Department of Fish and Wildlife ("Fish and Wildlife"), a State trustee agency, responded in a March 6, 2014, letter raising concerns about the Project related to fire risk and fuel modification zone impacts that could lead to additional areas for invasive species to take root, which could create dry fire areas. Fish and Wildlife recommended that the impact assessment include vegetation clearance and that surveys be conducted for special status plants, bats, and suitable habitat for bats.
22. In the meantime, the County continued processing all of the Plot Plans. On February 24, 2014, ERB conducted its second review of the Project, this time to assess the 11 newly submitted Plot Plan applications. ERB made similar recommendations as were made for the first five lots. In addition, it recommended minimum setbacks from streams and drainage courses and oak woodlands that resulted in a recommendation that two of the lots not be developed. Regional Planning staff, however, recommended that all lots could be developed with incorporation of mitigation measures related to aesthetics, air quality, biological resources, hydrology and water quality, and noise that would reduce all impacts to less than significant. On May 1, 2014, the Developer agreed to accept and incorporate the mitigation measures into the Project.

23. One week later, on May 8, 2014, as required by CEQA, the County sent the required Notice of Completion, and the finalized Initial Study and MND with the aforementioned mitigation measures set forth in the MMRP, to the State Clearinghouse for distribution to State agencies for their review and comments. A CEQA review period from May 13 to June 13, 2014 was established. The MND was also recirculated to all reviewing County departments in June 2014.
24. Numerous comments on the MND were received by Regional Planning opposing the Project and questioning the adequacy of the MND. These included a letter from the Community Association on July 9, 2014. Objections related to design, bulk, and height of the proposed residences. Commenters also asserted that the MND failed to adequately address aesthetic impacts on the community, surrounding trails, parkland, biological resources, and impacts to water quality. After a request initiated by Fish and Wildlife, the State Clearinghouse granted an extension of the MND comment period to June 30, 2014.
25. During the extended CEQA review period, Fish and Wildlife submitted a detailed six-page set of comments on the MND to Regional Planning in a letter dated June 24, 2014. Therein, Fish and Wildlife reiterated the need for special surveys and the timing of those surveys. Fish and Wildlife's letter also identified concerns regarding fuel modification impacts to surrounding oak woodland. The letter stated that direct impacts to 2.74 acres of understory plants and other habitat should require mitigation at a ratio to replace the impacted community's habitat value. Conservation of no less than six acres of intact oak woodland, which would not be subjected to any type of disturbance, was recommended. Also recommended were updated vegetation maps, further analysis of all fuel modification areas, analysis of mapped wetland designation areas, identification of potential impacts to stream and riparian resources, and mitigation and reporting commitments for issuance of a Lake and Streambed Alteration Agreement. Fish and Wildlife also recommended analysis of impacts to species protected by the California Endangered Species Act, further discussion on the purpose and need for the Project, staging areas, and access routes to construction and staging areas, and inclusion of a range of feasible alternatives. It further requested complete assessment of impacts to flora and fauna adjacent to the Project Site with emphasis on endangered, threatened, sensitive, and locally unique species including impacts from noise, light, and human activities on those species.
26. In light of the extensive comments from the community and Fish and Wildlife, Regional Planning re-evaluated the MND but ultimately determined that it remained the appropriate environmental document. After internal discussions and review and consultations with the Developer's consultant, Regional Planning's biologist completed the County's assessment of Fish and Wildlife's comments on September 8, 2014, determining that concerns raised by Fish and Wildlife had been addressed.

27. Moreover, the County Departments had provided their approvals of the Plot Plans, with conditions, as follows: the Fire Department on July 1, 2014, Public Health on July 3, 2014 (with the exception of one lot for which there were plumbing code concerns), Parks and Recreation on July 8, 2014, and Public Works on July 28, 2014.
28. On September 24, 2014, less than nine months after the Developer submitted the last set of Plot Plan applications, the Director adopted the MND and approved in concept 13 of the 16 Plot Plans. Two of the Plot Plans were not approved because the proposed residences exceeded the height limitations of the then-applicable A-1-1 Zone and the third was not approved because Public Health withheld its approval due to the plumbing code concerns. There is a two-week appeal period for Director's Review approvals, which made October 8, 2014, the last day that an appeal of the MND or the Plot Plan approvals in concept could be filed with the Planning Commission. As set forth above, an appeal of the approval of the MND for the Project was filed by the Community Association on that day. Pursuant to Section 22.60.230.A.3 of the County Code, the filing of an appeal vacates the decision appealed from unless reinstated by the Commission.
29. The appeal of the Director's approval of the MND by the Community Association contended, among other things, that there were aesthetic impacts along the Backbone and Saddle Peak Trails as well as to scenic vistas on Piuma Road due to the size of the homes, impacts that it contended were not appropriately addressed in the MND.
30. As set forth above, on October 10, 2014, two days after the above-referenced appeal was filed, the Coastal Commission certified the Santa Monica Mountains LCP. As a result, prior zoning, zoning regulations, and the 1986 Malibu Land Use Plan were no longer applicable to certain projects in the SMM Coastal Zone, including the Project. Despite the appeal to the Planning Commission, the Developer attempted to submit the Director's "approvals in concept" of the Plot Plans to the Coastal Commission but those were returned to the Developer by the Coastal Commission in light of the appeal of the MND's approval to the Planning Commission.
31. Pursuant to Section 22.44.910.E of the County Code (part of the new LIP), the approvals in concept of the 13 Plot Plans were no longer valid under the new Santa Monica Mountains LCP and the Developer was required to submit new applications to the County for projects that would be consistent with the new LCP. Said Section 22.44.910.E provides:

"Any proposed development within the Coastal Zone that is subject to the County's jurisdiction upon certification of the LCP and that the Director preliminarily approved (i.e., an "Approval in Concept") before effective certification of the LCP but for which a complete application has not been filed with the Coastal Commission for approval, shall be resubmitted to the County

through an application pursuant to this LIP. The applicant may request an application fee refund from the Coastal Commission for any fees previously paid to the Coastal Commission and from the Director for any fees previously paid to the County." (Underline added.)

32. The Project Site is located within a scenic resource area identified in the Santa Monica Mountains LCP and structures in such areas are limited by the LIP to 18 feet in height (Section 22.44.1250.C), which each of the proposed Residential Projects exceeds. As such, the Residential Projects could not comply with the new LCP and new plot plans dealing with, at a minimum, height issues and likely more, would need to be submitted to proceed with development under the new LCP.
33. Under CEQA and the CEQA Guidelines, the environmental assessment document must analyze the project intended to be approved and CEQA is intended to be used in conjunction with discretionary powers such as granting a permit. Various CEQA Guidelines and the CEQA statute reflect that an environmental assessment is necessarily linked to an actual project, including but not limited to, CEQA section 21002, and CEQA Guidelines 15002(a), 15002(e), 15004, 15040(a), 15081, 15074(b), and 15378(c). A negative declaration, including a mitigated negative declaration, must include a brief description of the project, a description that in this case will necessarily change due to needed redesign of the Residential Projects to comply with the LCP. In sum, the MND analyzed a project that can no longer be approved under the new LCP.
34. In light of the foregoing facts resulting from the certification of the Santa Monica Mountains LCP and the appeal of the MND's approval to the Planning Commission, Regional Planning recommended to the Developer that it submit new applications to the County for the Plot Plans consistent with the new LCP. The Developer refused, insisting that it was entitled to a hearing at the Planning Commission on the appeal of the MND claiming that, among other things, if it filed new applications it would be violating the Settlement Agreement as would the County if it refused to hold a hearing before the Planning Commission. The Developer also asserted that the Settlement Agreement was a development agreement that "froze" the zoning as of the date of that Settlement Agreement and thus, the new LIP would not apply to the Plot Plans.
35. A development agreement is a statutorily created land use entitlement. The relevant State statute mandates what must be done and included in a development agreement for it to be treated as such and for a developer to receive the benefits such an agreement can provide. Among those requirements are inclusion of a provision in any development agreement requiring periodic review of it by the County every 12 months and another provision establishing a specific duration of the agreement. Critically, neither periodic review nor a specific duration is required by the terms of the Settlement Agreement. In addition, under State law, approval of a development agreement by the Board must be in the form of an ordinance and, before approving a development

agreement, the Board must find that the project covered by said agreement is consistent with the County's General Plan. The Settlement Agreement was not approved as an ordinance and no finding was made regarding the General Plan prior to the Board motion approving the Settlement Agreement.

36. Development agreements related to projects located in a coastal zone must be submitted to, and approved by, the Coastal Commission to be effective, which did not occur in this case with respect to the Settlement Agreement. Finally, an appropriately noticed public hearing must be held regarding any proposed development agreement, a process not used by the Board when it approved the Settlement Agreement.
37. While disagreeing with the Developer's contentions that the Settlement Agreement was a development agreement and maintaining that the approvals in concept were no longer valid, the County agreed to hold a hearing at the Planning Commission regarding the MND, which as indicated above was held on April 8, 2015.

Regional Planning Commission Proceedings

38. At the Planning Commission hearing, Regional Planning staff presented the Project, recommended denial of the Community Association's appeal and upholding the MND but pointed out that the approvals in concept for the Plot Plans were no longer valid. The Planning Commission was advised that if the Commission upheld the MND, it could be "tiered off of" when reviewing any subsequent submittal of CDP applications to the County for development of the Project Site. At the hearing, counsel for the Community Association argued that the MND must be set aside because it evaluated a project designed prior to adoption of the Santa Monica Mountains LCP that could no longer be built because of inconsistency with the new LCP, that the homes must be redesigned to comply with that new LCP, and that an analysis of such homes would not fall within the parameters of the MND analysis.
39. In response to issues raised by Project opponents, counsel for the Developer testified at the Planning Commission hearing that the MND was adequate and properly prepared. He also asserted that the prior Environmental Impact Report prepared for the 1982 Tract approval addressed structure setback issues and fuel modification, which the Community Association's counsel later disputed. The Developer's counsel testified that water quality issues would be addressed by required State and federal permits, that visual impacts were mitigated, that building sites were not located in sensitive habitats and would not impede wildlife movement. He repeated his argument that the Settlement Agreement limited the extent of the County's review of the Residential Projects, a position rebutted by the Community Association's counsel in his testimony.
40. In addition to attorneys for the Developer and the Community Association, 13 other individuals spoke at the Planning Commission hearing, all opposed to

the Project as then designed. They expressed concerns related to impacts from fuel modification requirements, impacts to the Backbone Trail due to required brush clearance and impacts to wildlife movement. They also expressed concerns about impacts to the area's scenic quality and potential flood hazards. In rebuttal testimony, the Community Association's counsel argued that the MND was inadequate to evaluate impacts from redesigned homes because, among other things, the Project description in the MND would need to be substantially changed due to the certification of the Santa Monica Mountains LCP.

41. After closing the public hearing, the Planning Commission determined that the MND reflected assumptions for development in the Coastal Zone based on the 1986 Malibu Land Use Plan, and that, therefore, a new environmental document was necessary to analyze the 13 residences that would need to be redesigned to be compliant with the Santa Monica Mountains LCP. Accordingly, the Planning Commission upheld the appeal of the Community Association and invalidated the Director's adoption of the MND.

Board Hears Appeal of Planning Commission Decision

42. The Developer timely appealed the Planning Commission's decision to the Board, and the Board held its properly-noticed public hearing regarding the Project on October 20, 2015. At the Board hearing, staff from Regional Planning briefly explained the Project and its history since the Director's decision on the MND and Plot Plans, and explained the Planning Commission's rationale for upholding the Community Association's appeal and overturning the Director's approval of the MND. Regional Planning recommended that the Board deny the Developer's appeal and affirm the Planning Commission.
43. Eighteen members of the public testified at the Board hearing regarding the Project, two in favor of the Project and upholding the MND, two that did not indicate support or opposition, and 14 in opposition to the Project and requesting that the decision of the Planning Commission to overturn approval of the MND be upheld.
44. In testimony before the Board, two of the Developer's attorneys asserted that upholding the Planning Commission's decision would ripen a breach of contract claim against the County with respect to the Settlement Agreement, arguing that while the County was required to expeditiously process the Plot Plans under the agreement, it instead took "forever" to review the applications. One of the Developer's counsel also dismissed the assertion that the MND should not be approved because the Project necessarily must be changed to comply with the LCP as a "fairly nonsequitur CEQA argument." In response to arguments by the Developer's counsel and to an inquiry by another supervisor, one of the Board members explained that the Plot Plans could not be "grandfathered" under the 1986 Malibu Land Use Plan and prior zoning because a complete application for the Project had not been filed with the Coastal Commission by the deadline established in Section 22.44.910.E of the LIP to obtain such status.

45. The 14 people who testified against the Project at the Board hearing included individuals who reside near the Project Site or in nearby areas, representatives of homeowners' groups based in the Santa Monica Mountains, and an officer with the Santa Monica Mountains Conservancy (the "Conservancy"), a State-created agency that purchases, preserves, protects, and restores parkland in both wilderness and urban areas. All Project opponents testified that the Santa Monica Mountains LCP provisions should be applied to the Project the same as they are to all other landowners and their properties. Many testified that years of work by the community had gone into developing the LCP to include appropriate regulations for the SMM Coastal Zone to balance protecting the environment with property development rights. The Conservancy representative pointed out that the Conservancy was required to modify plans for park improvement projects to comply with the Santa Monica Mountains LCP, changes that he noted improved those projects. Several speakers reiterated the point that the Developer is required to submit new applications for projects that will be consistent with the LCP because the Developer had not met the LIP deadline for filing applications on existing projects with the Coastal Commission for its review.
46. One Project opponent at the Board hearing took issue with the Developer's claim that the Settlement Agreement was a development agreement, accurately disputing the contention that the Settlement Agreement created a vested right to circumvent the Santa Monica Mountains LCP. Another person testified that the requirements of the LCP should be upheld not only for the benefit of residents in the area but for the benefit of thousands that visit the area. One testifier questioned the brush clearance analysis in the MND. Yet another testified that CEQA requires an adequate project description, adding, "If a project is invalidated, then by definition, the environmental analysis accompanying the project becomes moot . . . there is no reason to certify an environmental document for a project that does not exist."
47. After completion of public testimony, Supervisor Sheila Kuehl noted that the Board's Executive Office received 185 letters that opposed the Project and requested that the Santa Monica Mountains LCP be used as the standard for reviewing any project. She stated: "Santa Monica Mountains Local Coastal Program, the LCP, is the standard of review for this project because . . . [the Developer] failed to file a completed application with the Coastal Commission prior to the effective date of the LCP." The Supervisor pointed out that development could occur on the Project Site but any such development would need to comply with the LCP. She concluded, "[T]he environmental analysis required under CEQA doesn't happen in a vacuum. It's used in conjunction with a specific project. So in this case, since the project as proposed is no longer feasible and can't be approved because it is not consistent with numerous provisions of the County's adopted LCP, we cannot accept an environmental document for a project that no longer exists."

48. After closure of its public hearing, the Board voted to uphold the decision of the Planning Commission and instructed the Office of County Counsel to prepare appropriate findings for the Board's consideration.

Additional Findings

49. The Board finds that the Settlement Agreement was not a development agreement and, thus, the Settlement Agreement did not make the zoning regulations that were in existence on the date of the Settlement Agreement applicable to the Project.
50. The Board finds that the County complied with the terms of the Settlement Agreement by, among other things and not limited to, taking less time to approve the Plot Plans than it took the Developer to submit the remaining plot plan applications after execution of the Settlement Agreement.
51. The Board finds that the Developer failed to meet the deadline set forth in Section 22.44.910.E of the LIP to avoid having to submit new applications to the County for the Residential Projects that were, as a result, subject to the new Santa Monica Mountains LCP.
52. The Board finds that upon certification of the Santa Monica Mountains LCP, the provisions of its LUP and LIP became applicable to development proposed on the Project Site. The Board further finds that, once the LCP was certified, the Plot Plans could no longer be approved because they do not comply with that LCP.
53. The Board finds that the Project analyzed in the MND is not consistent with the County General Plan, including the Santa Monica Mountains LUP, which is a component of that General Plan.
54. The Board finds that the MND need not, and cannot, be approved because it analyzes a Project that must be redesigned.

BASED ON THE FOREGOING, THEREFORE, THE BOARD OF SUPERVISORS:

1. Denies the appeal of Environmental Assessment Case No. RENV 2012-00258–(3);
2. Affirms the decision of the Regional Planning Commission that disapproved the MND for the Project; and
3. Upholds the determination that the Director's approvals in concept of the Residential Projects as reflected in the Plot Plans are no longer valid due to certification of the Santa Monica Mountains Local Coastal Program.